IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-782

ARCHIE PELTZMAN,

Petitioner,

v.

CENTRAL GULF LINES, INC.,

Respondent.

BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

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Question Presented

Does the termination of employment of a marine radio operator, pursuant to a valid union security agreement, raise any special and important reasons warranting the grant of a Writ of Certiorari?

Statute Involved

29 U.S.C. 158(a)(3) is pertinent herein.

Statement

Background

Petitioner was an active member of the American Radio Association, AFL-CIO ("ARA" or "union") until mid-1949 at which time he lost his Coast Guard Radio Operator's

License and was unable to sail (A4).[1] At the end of June 1949, he ceased paying union dues (SA 12, 13, 23, 111).[2]

On March 31, 1950 he was automatically suspended from the ARA for non-payment of dues in accordance with the union's Constitution which provided for such suspension when a member became more than 6 months in arrears in dues payments (SA 12-13, ¶ 4; SA 23; SA 22, Article XII, § 1(c)). At the time of his automatic suspension, petitioner was nine months in arrears (SA 12-13, ¶ 4; SA 23).

In 1952, the ARA Constitution was amended to provide for automatic expulsion of members more than 6 months in dues arrears and that an expelled member to re-enter the union would be able to do so only in accordance with the Permit Card provisions of the Constitution (SA 13, ¶ 6; SA 29, Article XII, § 1(c)).

By virtue of these requirements, maintained in all subsequent ARA Constitutions, petitioner and others similarly situated were deemed to be automatically expelled for being in dues arrears in excess of 6 months and would be required to return under the Constitution's provisions as new members (SA 13, ¶ 7; SA 31, Article XII, § 1(c) and § 3(a) and (b); SA 33, Article XII, § 1(c) and § 3(a) and (b); SA 19, ¶ 26; SA 47-104, 118, 126).

The Coast Guard returned petitioner's License in 1967 and he returned to employment as a radio operator during December, 1967 (SA 14, ¶ 9). Having previously been expelled from the ARA, when he returned he was not then a union member and was required under the union Constitution to enter as a new member (SA 14, ¶ 12; SA 133).

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[1] References to Appellant's Appendix in Appeal Docket No. 75-7004 are designated A followed by the page numbers(s) thereof.

[2] References to Appellee's Supplemental Appendix in Appeal Docket No. 75-7004 are designated SA followed by the page number(s) thereof.

From 1967 to August 1970 petitioner was employed by various steamship companies and although demanded by the ARA, he refused to pay the initiation fee required to become a member (SA 15, ¶ 15; SA 26).[3]

Petitioner was first employed by respondent in August of 1970. From August 1970 to May 1971, he made several voyages for respondent (SA 2, ¶ 4).

In January, May and August of 1971 respondent was advised by the union that petitioner had not paid his union initiation fee (SA 4, ¶ 11; SA 41, 111-113). The contract between the respondent and the ARA contains a union security provision which provides:

> "The Company agrees, as a condition of employment, that all employees in the bargaining unit shall become and remain members of the Union thirty (30) days after date of hiring." (SA 16, ¶ 20; SA 42, § 4(b)).

During January of 1971 a letter was mailed to petitioner's home address and to petitioner at several places where the vessel on which he was employed on was scheduled to stop. The letter advised petitioner of the requirement of an initiation fee in order to acquire union membership (SA 41, 117-118).

During May, the ARA personally advised petitioner of the union's requirement of an initiation fee in order to acquire union membership and that (SA 16, ¶ 20; SA 41):

> "If such payment is not made, we shall have no alternative than to request your immediate discharge by the Company."

Thereafter, petitioner went on vacation. In August of 1971, upon completion of his vacation, respondent was in-

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[3] Ten individuals, not including petitioner, who were automatically suspended and/or expelled have re-entered the ARA. Each of the ten, as required by the ARA Constitution, paid an initiation fee.

formed by the ARA that the initiation fee had not been paid and that petitioner was not cleared to sail. In accordance with its contract with the ARA, respondent refused to hire him (SA 4, ¶ 11; SA 10-11).

Prior Proceedings

Petitioner commenced his action seeking damages and injunctive relief.

Respondent moved for and was granted summary judgment on four separate and distinct grounds. Petitioner's cross-motion for partial summary judgment was denied (*Peltzman* v. *Central Gulf Lines, Inc.*, —— F. Supp. ——, 86 LRRM 2127 (SDNY 1974); (not officially reported); Pet. App., 33-38).[4]

On appeal, the Court of Appeals, *Per Curiam,* rejected all of petitioner's arguments on the law holding that:

> "Most of Peltzman's arguments can be dealt with summarily. Nothing in maritime law renders illegal a discharge that is authorized under a legitimate union security clause. There is no colorable basis for an antitrust claim in this case. The security clause here is not subject to attack under the federal or New York constitutions, see *NLRB* v. *General Motors Corp.*, 373 U.S. 734 (1963); *Buckley* v. *AFTRA*, —— F.2d —— (2 Cir., 1974), slip opinions at 3073; *Linscott* v. *Millers Falls Co.*, 440 F.2d 14 (1 Cir.), *cert. denied*, 404 U.S. 872 (1971). And any claim that the company has committed an unfair labor practice in discharging him would plainly be subject to the exclusive jurisdiction of the NLRB." (*Peltzman* v. *Central Gulf Lines, Inc.*, 497 F.2d 332, 334 (2d Cir. 1974))

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[4] References to Petitioner's Appendix to his Petition For Writ of Certiorari are designated Pet. App. followed by the page number(s) thereof.

The case was remanded to the District Court to determine the following sole, narrow issue (497 F.2d at 335):

> "If the initiation fee was uniformly required by the union constitution and by-laws, and was regularly demanded of those in his position, then it is likely that the union security clause was properly invoked and that the contract claim must fail."

On remand, respondent renewed its motion for summary judgment to establish by affidavits that the ARA had not treated petitioner in a discriminatory fashion (A7).

The District Court informed petitioner that his reply need not be in writing; that a hearing would be conducted ". . . merely for the purpose of smoking out the existence of an issue . . ." at which time petitioner could produce ". . . any evidence and examine any witnesses he thought appropriate" (A7).

Two days of hearings were held, during which petitioner was given great latitude in introducing evidence bearing on the issue before the Court.

The District Court granted summary judgment in respondent's favor holding that:

> ". . . plaintiff at the time of discharge was not a member of the ARA because he failed and refused to pay an initiation fee that was uniformly required by the union constitution and regularly demanded of those in his position. Furthermore, the record shows that plaintiff was discharged pursuant to the ARA's valid union security clause.
>
> Accordingly, I find that defendant has shown with regard to plaintiff's contract claim that there is no genuine issues as to any material fact, and that the defendant is entitled to a judgment as a matter of law, pursuant to Rule 56, Federal Rules of Civil Procedure." (*Peltzman* v. *Central Gulf Lines, Inc.*, ——

F. Supp. ——, 88 LRRM 2924, 2927 (SDNY, 1974); (not officially reported); Pet. App. 39-50 at 50.)[5]

The Court of Appeals affirmed the summary judgment dismissing the complaint (Pet. App. 22-25). Petitioner now seeks a Writ of Certiorari to review that affirmance.

ARGUMENT

The Court Of Appeals' Decision Is Correct And The Petition Presents No Issue Warranting Further Review. Accordingly, The Writ Should Not Be Granted.

1. Petitioner has presented no arguments which should lead this Court to abandon its own long established rule enunciated by Mr. Justice Holmes that:

> "We do not grant certiorari to review evidence and discuss facts" (*United States* v. *James J. Johnston*, 268 U.S. 220, 227 (1925)).

A voluminous record was compiled in the Courts below. That record was twice reviewed by the Court of Appeals and it unequivocally held that:

> "The evidence was equally clear and uncontroverted that the provisions of the ARA Constitution obligating those who had been suspended or expelled from membership to pay an initiation fee in order to obtain re-entry had been applied uniformly and in a non-discriminatory fashion. . . ."
>
> * * *
>
> The district court thus properly found that there was no genuine issue of material fact with respect to Peltzman's non-membership in the ARA and the non-

[5] Petitioner's Appendix omits the words "he failed and refused" which should be added after the word "because" at the end of the third line of the first full paragraph on page 50.

> discriminatory enforcement of the pertinent provisions of the ARA Constitution. Having upheld the validity of the union security clause in the ARA contract governing Peltzman's employment, we accordingly affirm the district court's grant of summary judgment dismissing the complaint." (*Peltzman* v. *Central Gulf Lines, Inc.*, —— F.2d —— (2d Cir. 1975), Pet. App. 22-25 at 25).

The Court of Appeals' determination[6] is indisputably correct and should not be reviewed.

2. Petitioner's contention that the Court of Appeals erroneously upheld the validity of the union security provision in the contract between respondent and the ARA is contrary to well established statutory and case law.

[6] The evidence and petitioner's factual contentions had also been reviewed by the National Labor Relations Board ("Board") on two prior occasions. Both reviews resulted in determinations adverse to petitioner.

In 1969 while sailing aboard a Grace Line vessel petitioner filed an unfair labor practice charge against the ARA (SA 37). The Regional Director refused to issue a complaint finding that the $2,000 initiation fee was "uniformly" required for union membership (SA 38-39). The Board's General Counsel denied petitioner's appeal finding that (SA 40):

a) The ARA did not unlawfully deny him reinstatement;
b) He had been properly expelled [in 1952] for non-payment of dues; and
c) Even assuming petitioner was on inactive status, such status did not entitle him to withhold dues payment and therefore he was properly expelled, thus, necessitating his re-entry as a new member.

In 1971 petitioner filed unfair labor practice charges against the respondent and the ARA claiming, among other things, that he was not obligated to pay an initiation fee. The Regional Director refused to issue complaints and the Board's General Counsel affirmed the denials (SA 17, ¶ 22; SA 43-46). Attempts to obtain judicial review were rejected by the Second Circuit and this Court (*Peltzman* v. *National Labor Relations Board*, Docket No. 72-1091 (not officially reported); 409 U.S. 887 and 409 U.S. 1050 (1972) cert. and rehearing den. respectively).

Section 8(a)(3) of the Labor Management Relations Act, as amended (29 U.S.C. 158(a)(3)), permits employers and unions to enter into union security agreements under the conditions and limitations specified therein.

The union security provision in the contract in question is, in fact, a paraphrase of language contained in and thus specifically sanctioned by 29 U.S.C. 158(a)(3).[7]

More importantly, the constitutionality of union security clauses, similar to the one contained in the instant contract, has been confirmed by this Court in *NLRB* v. *General Motors Corp.*, 373 U.S. 374 (1963).

Petitioner's reliance on *Mobile Oil Corp.* v. *Oil, Chemical & Atomic Workers International Union,* 504 F.2d 272 (5th Cir. 1974) is misplaced. That case bears no legal or factual resemblance to the instant matter and accordingly is inapplicable for the following reasons.

Petitioner is a New York resident and was discharged in New York. The ARA has its principal office in New York. New York is not a Right-To-Work State. Respondent has its principal office in Louisiana and that State repealed its Right-To-Work Law in 1956 (Act 1956, No. 16, Section 1).

Clearly petitioner has presented no legal issue[8] warranting further review by this Court.

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[7] The validity of the union security provision contained in the contract between respondent and the ARA was also questioned by petitioner and upheld by the Board in the unfair labor practice charges brought against respondent and the ARA in 1971 (see footnote 6, *supra*).

[8] 46 U.S.C. 599(a) relied on by petitioner is not even remotely applicable to the instant matter. That section of the Shipping Act is an anti-kickback provision and is not in conflict with the Labor Management Relations Act provision (29 U.S.C. 158(a)(3)) which permits union security agreements.

CONCLUSION

The Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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